

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 15460 of 2007(M)

PETITIONERS:

1. ADVOCATE C.GOPALAKRISHNAN NAIR,
S/O.K.S.CHANDRASEKHARAN NAIR, AGED 50 YEARS,
PRESIDENT, ANANTHAPURAM CO-OPERATIVE SOCIETY
LTD.NO.T 184, KAITHAMUKKU, TRIVANDRUM.
2. K.RATISH, VICE PRESIDENT,
ANANTHAPURAM CO-OPERATIVE SOCIETY LTD
NO.T 184, KAITHAMUKKU, TRIVANDRUM.
3. S.DEVIDAS, BOARD MEMBER, ANANTHAPURAM
CO-OPERATIVE SOCIETY LTD.NO.T 184,
KAITHAMUKKU, TRIVANDRUM.
4. S.GOPAKUMAR, BOARD MEMBER, ANANTHAPURAM
CO-OPERATIVE SOCIETY LTD.NO.T 184,
KAITHAMUKKU, TRIVANDRUM.
5. G.VIJAYALAKSHMY, BOARD MEMBER,
ANANTHAPURAM CO-OPERATIVE SOCIETY
LTD.NO.T 184, KAITHAMUKKU, TRIVANDRUM.
6. S.PRABHADEVI, BOARD MEMBER,
ANANTHAPURAM CO-OPERATIVE SOCIETY
LTD.NO. T 184, KAITHAMUKKU, TRIVANDRUM.
7. M.PREMRAJ, BOARD MEMBER, ANANTHAPURAM
CO-OPERATIVE SOCIETY LTD.NO.T 184,
KAITHAMUKKU, TRIVANDRUM.
8. G.PRATAPACHANDRA KURUP, BOARD MEMBER,
ANANTHAPURAM CO-OPERATIVE SOCIETY LTD.NO.T 184,
KAITHAMUKKU, TRIVANDRUM.

BY ADV. SRI.K.RAMAKUMAR

..2/-

...2....

WPC.NO.15460/2007M

RESPONDENTS:

1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), THIRUVANANTHAPURAM.
2. THE ANANTHAPURAM CO-OPERATIVE SOCIETY LTD.NO.T 184, KAITHAMUKKU, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.
3. THE PART TIME ADMINISTRATOR, THE ANANTHAPURAM CO-OPERATIVE SOCIETY LTD.NO. T 184, KAITHAMUKKU, THIRUVANANTHAPURAM.

BY ADV. SRI.GEORGE POONTHOTTAM for R2
BY GOVERNMENT PLEADER SRI. P.N.SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON 11/07/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE ORDER NO.P(2)4936/07 DTD. 19/05/2007
ISSUED BY R1.
- EXT.P2: COPY OF THE MINUTES OF THE MEETING OF THE 2ND
RESPONDENT SOCIETY HELD ON 15/05/2007.
- EXT.P3: COPY OF VOUCHER DTD. 10/05/2007 OF R2 SOCIETY.
- EXT.P4: COPY OF VOUCHER DTD. 10/05/2007 OF RS SOCIETY.
- EXT.P5: COPY OF VOUCHER DTD. 14/05/2007 OF R2 SOCIETY.
- EXT.P6: COPY OF THE REPRESENTATION SUBMITTED BY THE
1ST PETITIONER BEFORE R1.
- EXT.P7: COPY OF LOAN APPLICATION DULY SIGNED BY THE
SECRETARY.
- EXT.P8: DO.....DO.....
- EXT.P9: DO.....DO.....
- EXT.P10: DO.....DO.....

1ST RESPONDENT'S EXHIBITS:

- EXT.R1(A): COPY OF THE COVERING LETTER DTD. 5/05/2007 SENT BY THE
PETITIONERS 5 TO 8.
- EXT.R1(B): COPY OF THE RESIGNATION LETTER OF THE 5TH PETITIONER.
- EXT.R1(C): COPY OF THE RESIGNATION LETTER OF THE 6TH PETITIONER.
- EXT.R1(D): COPY OF THE RESIGNATION LETTER OF THE 7TH PETITIONER.

WPC.NO.15460/2007 M

EXT.R1(E): COPY OF THE RESIGNATION LETTER OF THE 8TH PETITIONER.

EXT.R1(F): COPY OF THE WRITTEN STATEMENT FILED BY THE 5TH PETITIONER.

EXT.R1(G): COPY OF THE WRITTEN STATEMENT FILED BY THE 6TH PETITIONER.

EXT.R1(H): COPY OF THE WRITTEN STATEMENT FILED BY THE 7TH PETITIONER.

EXT.R1(I): COPY OF THE WRITTEN STATEMENT FILED BY THE 8TH PETITIONER.

EXT.R1(J): COPY OF THE MINUTES BOOK OF THE SOCIETY.

EXT.R1(K): COPY OF THE REPORT SUBMITTED BY THE SECRETARY TO THIS RESPONDENT.

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): COPY OF THE RESIGNATION LETTER GIVEN BY RESPONDENTS 5 TO 8 DTD. 2/05/2007.

EXT.R2(B): COPY OF THE LETTER DTD. 16/06/2007.

EXT.R2(C): COPY OF THE LETTER DTD. 16/06/2007.

EXT.R2(D): COPY OF THE LETTER DTD. 16/06/2007.

EXT.R2(E): COPY OF THE LETTER DTD. 1/06/2007.

/TRUE COPY/

KSS

K.M.JOSEPH, J.

WP.(C) No.15460 of 2007

Dated this the 11th day of July, 2007

JUDGMENT

Petitioners have approached this court challenging Ext.P1 and also seeking a direction forbearing the third respondent (Part-time Administrator) from either taking charge or discharging any functions and to immediately hand over back the administration of the second respondent Society to the petitioners as elected members of the said Society. Ext.P1 is an order dated 19.5.2007 passed by the Joint Registrar invoking Section 33 of the Societies Act in regard to the second respondent Society and purporting to appoint a part-time administrator for a period of six months. Ext.P1 is premised on the statement that petitioners 5 to 8 have tendered resignation to the President leading to loss of quorum.

2. The case of the petitioners, eight in number, is briefly as follows:

The impugned order is ill-motivated by extraneous consideration. The second respondent Society is one of the well known A Class Co-

operative Society in Trivandrum area with four branches. By reason of the popularity and success in the field earned by the petitioners as members of the Board of Directors, CPI(M) and its District leadership were attempting to somehow snatch away the Society and its administration from the petitioners misusing their political clout. It is further stated that with that in view, the first respondent was put under pressure to supercede the Society on the specious plea of resignation letter submitted by petitioners 5 to 8. It is specifically stated that they had never submitted any resignation letters at all and that the present Secretary, who is hand in glove with the Joint Registrar had obtained some signatures from petitioners 5 to 8 in the pretext that it was necessary for some official business. It is further stated that using that signatures resignation letters were prepared by the Secretary on the ground that resignation letters have been submitted by petitioners 5 to 8, which they never did thus leading to Ext.P1 order. Then it is stated that none of the petitioners particularly petitioners 5 to 8 have ever tendered any resignation as contemplated under Rule 38 of the Rules. The first petitioner is the President of the Society. It is stated that he

had never received any letter of resignation from any of the members much less petitioners 5 to 8. It is stated that signed papers obtained by the Secretary have been cooked up for the occasion. In paragraph 4 it is stated that petitioners 5 to 8 had never tendered any resignation or submitted any resignation letters to the President as is mandatorily required under Rule 38(3) of the Rules. It is their further case that they had participated in a meeting after the so called resignation and they signed the minutes on 15.5.2007 when the alleged resignation is on 2.5.2007. Ext.P2 is produced as the true copy of the said minutes. Exts.P3 to P5 are produced as vouchers signed by petitioners 5 to 8 showing drawal of TA and attended meetings at other branches. First petitioner is alleged to have brought the matter to the attention of the Joint Registrar vide Ext.P6 on the same day.

3. Counter affidavits have been field by both the Joint Registrar and also the second respondent. In the counter affidavit of the first respondent it is inter alia stated as follows:

Petitioners 5 to 8 have tendered resignation on 2.5.2007. They have submitted their resignation letters to the first petitioner and the

copy of the same has been submitted to the Secretary of the second respondent Society. Copies of the resignation letters were also sent to the Joint Registrar with a covering letter. Exts. R1(b) to R1(e) are produced as the true copies of the resignation letters of petitioners 5 to 8. It is stated that the first respondent has enquired into the matter through the Assistant Registrar (General), Thiruvananthapuram and he submitted report on 19.5.2007. It is stated in the report that the signatures of resigned persons were verified with the records of the Bank and were found correct. Exts.R1(f) to R1(i) are produced as true copies of the written statements filed by petitioners 5 to 8, wherein they have stated that they stand firmly with the resignation from the Board of Management of the Society. It is stated that they have also stated that they have submitted the resignation letters directly to the President of the second respondent Society and also submitted a copy of the same to the Secretary. Ext.R1(j) is the true copy of the minutes book of the Society. It is stated that the case of meeting held on 15.5.2007 is denied as the Secretary has submitted a copy of the minutes in which it is noted that the meeting was postponed due to lack of quorum. It is

further stated that the President is keeping the minutes book so that the person can write the minutes according to his interest and he can manipulate the same. Ext.R1(k) is produced as the report submitted by the Secretary in answer to the direction issued by the Administrator calling upon the Secretary to produce the minutes book, in which the Secretary has stated that the minutes book of the Society is in the custody of the President. It is also stated that after the resignation of petitioners 5 to 8, the other petitioners have threatened the members who have resigned and obtained signatures to file the writ petition. It is also stated that it is learnt that petitioners 1 to 4 have attacked the houses of the resigned members and they have got bodily injuries also.

4. In the counter affidavit filed by the second respondent, the Secretary of the Society, has stated inter alia as follows:

Petitioners 5 to 8 have given their resignation letters addressed to the President of the Society as provided under Rule 38(3) of the Rules on 2.5.2007. Ext.R2(a) is produced as the copy of the resignation letters given by petitioners 5 to 8 in their own hand writing. They are stated to be the photo copies given to the Secretary after serving the

original to the President as provided under law. There is also reference to the enquiry and the letter given by the resigned members. It is stated by him that after receipt of the resignation the Secretary was instructed by the President to convene a meeting of the Committee on 15.5.2007. It is stated that the minutes of the meetings till 15.5.2007 was written by the Secretary, but the minutes of the meeting held on 15.5.2007 was written by someone else. It so happened since the minutes book was taken by the President on 15.5.2007 when there was no quorum for the meeting. The president wanted to retain the books, as Secretary of the Society he could not resist or prevent the same.

5. In I.A. 7857 of 2007 petitioners have also produced Exts.P7 to P10. They are stated to be true copies of some loan applications. They are produced in an attempt to show that petitioners 5 to 8 have attended the meeting of the Board held on 15.5.2007 and loan committee of the Vellayani Branch held on 10.5.2007 and the Managing Committee had disbursed loans and in the minutes the Secretary who was instrumental for dislodging the Society has counter signed in the loan application. There was a direction to the second

respondent to make available the minutes book of the Branch Loan Committee of the Vellayani Branch. It is stated in the additional affidavit filed by the second respondent that the Branch Manager was directed by the Secretary to make available the minutes book of the Branch loan Committee by letter dated 16.6.2007. By Ext.R2(c) it is stated that on getting information regarding the convening of the meeting of the Board of Directors on 15.5.2007, the Vellayani Loan Committee Minutes Book had been entrusted with the President through the Collection Agent Sri.P.Sanal Kumar. Sri. P.Sanal Kumar is alleged to have given Ext.R2(d) to the effect that President was entrusted with the book. Ext.R2(e) is produced to show that the Minutes Book of the Managing Committee was with the first petitioner till 1.6.2007 and it is the receipt acknowledging the return and receipt. On these pleadings and materials produced, counsel for the parties have addressed the following contentions:

Learned counsel for the petitioners Sri. K.Ramakumar would submit that there is absolutely no warrant for issuing Ext.P1 invoking Section 33. Petitioners 5 to 8 have not resigned. He would submit that

Rule 38(3) of the Rules provide for the manner in which the resignation is to be given to become effective law. Resignation in other words has to be tendered by both an elected member or a nominated member to the President. The President has to within seven days of the receipt place the resignation letter before the Board in the case of an elected member and before the authorised person in the case of a nominated member. Rule 38(3) provides that resignation will become effective upon it being accepted. He would therefore contend that unless the procedure is followed, there cannot be any resignation in law. He would further contend that circumstances of the case would make it clear that the members who have allegedly resigned had participated in a meeting of the Board of Directors on 15.5.2007. He relied on Ext.P2 minutes book. He would further contend that they have received sitting fees and they have also taken decision on loan applications. These circumstances are relied on to show that the alleged case of resignation is palpably unsustainable and ill-motivated.

6. On the other hand counsel for the respondents would point out that Explanation to Section 33 has to be called into aid. Explanation to

Section 33 reads as follows:

“Explanation.- For the purpose of this sub-section, a tender of resignation by a member of the Committee shall have the effect of terminating his membership from the Committee.”

Invoking the same they would contend that resignation to be effective for the purpose of Section 33 need not be one satisfying the requirements under Rule 38(3).

7. Sri.George Poonthottam appearing on behalf of the second respondent would point out the discrepancy in the pleadings to point out that there is no bonafides in the case of the petitioners. He would contend that they would contend in one breath that there is no resignation at all and the Secretary had extracted the signatures and made them up into resignation letters. Still later the petitioners contended that their resignation is ineffective as it was not addressed to the President as required under law, it is pointed out. Counsel for respondents 1 and 2 would point out that petitioners have given resignation and they have also given written statements referred to earlier as Exts. R1(f) to R1(i) putting the matters beyond any doubt that

they have indeed resigned. Respondents would rely on the decisions of this court reported in **Deputy Registrar of Co-operative Society v. P.K. George** (1974 K.L.T. 189), in **Varma v. Joint Registrar** (1987 (2) K.L.T. 420) and in **Baby Chemparathy v. Joint Registrar of Co-operative Societies** (2002(2) K.L.T.730).

8. Sri.K.Ramakumar on the other hand would rely on the decision of a learned Single Judge reported in **Sadasivan v. Joint Registrar** (1994(2) K.L.T. 238).

9. In the decision reported in **Deputy Registrar of Co-operative Society v. P.K. George** (1974 K.L.T. 189) a Division Bench of this court had occasion to consider the matter in the context of the allegation that two of the nominated members had resigned leading to an order under Section 33 being passed. The court held as follows:

“Counsel for the respondent stressed the well-known principle that when the law has ordained that a certain act shall be done in a certain manner, it shall be done only in that particular manner, or, not at all. He pointed out that under the Explanation to S.33, a tender of resignation shall have the effect of terminating the membership of the Committee, and that a tender of resignation is contemplated

only by sub-r.(3) of R.33 and therefore must be done as enjoined by that sub-rule; and if not, cannot be regarded as valid. Sub-r. 3 and 4 between them provide for the whole process of resignation, from tender to acceptance. Non-compliance with every step does not invalidate the resignation. We are unable to read sub-r.(3) as anything more than a procedural provision. The said is only directory, and non-compliance with it, does not, in our opinion, invalidate the resignation, as the same is to be accepted by the appointing authority and is to become effective only on such acceptance. The explanation to S.33 is for the limited purpose of action under the said Section. The ordinary mode of resignation and its acceptance is contained in R.39, and despite the Explanation, nothing precludes the Registrar from acting under S.33 after a resignation has taken effect to the usual way.”

The decision reported in **Varma v. Joint Registrar** (1987(2) K.L.T. 420) was in a case where there was no President. In such circumstances the court took the view that the resignations though not tendered to the President as required in law were still effective. In the decision reported in **Sadasivan v. Joint Registrar** (1994(2) K.L.T. 238), on which considerable reliance is placed on by the petitioners, it

is necessary to notice the facts in some detail. That is a case where the petitioners were the President and some members. The second petitioner therein was alleged to have tendered his resignation on 17.11.1993. The court came to the conclusion that there was no tendering of the resignation letter to the President as required under Rule 38. Other circumstances were relied on by the learned Judge in holding that there was no resignation. The learned Single Judge held as follows:

“The Explanation to S.33(1) states that the tendering of resignation by a member of the committee shall have the effect of terminating his membership from the committee. As to how he should tender his resignation is laid down in Rule 38(3) namely that it should be tendered to the President of the committee. As soon as the resignation is so tendered it takes effect and the member ceases to be a member of the committee. Though sub-rule(4) requires the President to place the resignation before the committee for consideration, the committee has no role to play in the matter of acceptance or non-acceptance of the resignation, inasmuch as it takes effect on its being tendered to the President, and the member ceased to be a member when it

is tendered to the President. When the consequence of tender of a resignation is so serious and the member ceases to be in the committee immediately on such tender, it is imperative that the mode prescribed for tender of resignation is strictly followed, before it can take effect as a resignation. The procedure prescribed is mandatory. The Act or the Rules do not prescribe any other mode of tendering resignation by a member of the committee. It is beyond controversy that when an act is required to be done in a particular manner, it shall be done in that manner and not in any other. Other modes of performance are necessary forbidden.”

10. It is to be noted that that is a case where on 19.11.1993 the second petitioner therein had written a letter to the President stating that he had not actually resigned. Of course Government relied on certain materials to show that he had indeed resigned. But there were materials produced to show that the second petitioner had rebutted the same. The impugned order did not deal with the dispute. The serious repercussions in the matter where there is non compliance with the statutory procedure was highlighted by the court.

11. In the decision reported in **Baby Chemparathy v. Joint**

Registrar of Co-operative Societies (2002(2) K.L.T 730) this court has held as follows:

“There is however, a procedure for resignation from the committee provided under R.38(3) and (4) of the Kerala Co-operative Societies Rules, 1969. While the Act contemplates the very act of tender of resignation as sufficient for the purpose of initiating action under S.33, the Rules provide for the acceptance of the resignation. But action under S.33(1) need not await the action by the President on the resignation tendered by the member. The legislative intention is clear; from an action under S.33(1) the due expression of the decision by a member of the committee is sufficient. The word 'tender' for the purposes of S.33 has to be taken to mean only the expression of the decision of a member to resign. It is also to be seen that under S.33 such a resignation cannot be withdrawn since it takes effect simultaneously with the tender and there is cessation of membership. For the purpose of S.33(1) as observed above the act of resignation and its communication is sufficient.”

The court took note of the fact that the judgment of the Division Bench was not brought to the notice of the learned Judges who decided the

cases in **Varma v. Joint Registrar** (1987(2) K.L.T. 420) and in **Sadasivan v. Joint Registrar** (1994(2) K.L.T. 238). According to the learned Single Judge tendering of the resignation to the President cannot be held to be mandatory under the decision of the Division Bench.

12. I will examine the materials and pleadings available in this case. On the one hand petitioners would contend that there was no resignation at all. They would contend that signatures were taken by the Secretary, who is hand in glove with the authorities and resignation letters were dispatched to the Joint Registrar. They would also contend that there is no resignation letter addressed to the President as required under Rule 38(3). I cannot overlook certain circumstances. Ext.P2 is produced as the minutes book by the petitioners of the meeting held allegedly on 15.5.2007 and to show that petitioners 5 to 8 also participated therein on 15.5.2007 after the alleged resignation on 2.5.2007. Ext.P2 refers to decision No.41. As pointed out by counsel for the Secretary, that was a decision taken in an earlier meeting. But under the signature of the President the date shown is 15.5.2007. As

correctly pointed out by learned counsel for the second respondent Decision No.41 appears to be a decision taken on an earlier date. As regards the minutes book relating to the purported meeting held on 15.5.2007 it is not written by the Secretary. As stated therein the Secretary was admittedly not present. Going by Ext.R2(e) produced by the Secretary, admittedly the minutes book was retained by the first petitioner and it was handed over only on 1.6.2007. Therefore the minutes book apparently was with the first petitioner. It is the Secretary who is to keep the minutes book of the Society. Therefore I would not lay much store by Ext.P2 minutes book produced to show that petitioners 5 to 8 had attended the meeting. The cardinal question to be considered is whether in fact petitioners 5 to 8 had resigned. No doubt resignation of a member of the Committee is a very serious matter in the circumstance in which quorum is lost as it paves the way for action under Section 33 supplanting the elected members with an Administrator or Committee appointed by the Registrar. Therefore it is imperative that the resignation must be shown to have actually taken place. But the law provides that the procedure under Rule 38 (3) need

not be followed for the purpose of Section 33 and all that the explanation under Section 33 requires is that there must be tendering of resignation. In this case it is to be noted that Exts.R1(b) to R1(e) appears to be letters of resignation dated 2.5.2007 addressed to the President by petitioners 5 to 8. Going by Exts.R1(f) to R1(i) petitioners 5 to 8 have given statements, which would show that far from disowning the resignation they have categorically reiterated the factum of their resignation. It is significant to note that in this case quite apart from the stand of the petitioners, which reflects a certain measure of contradiction, the materials produced by respondent No.1 would show that the petitioners 5 to 8 had in fact admitted the fact of their having resigned as evident from Exts.R1(f) to R1(i). Admittedly they have not disputed their signatures in the letter of resignations. The letters of resignation as produced are all seen addressed to the President. Of course the case of the second respondent is that what is produced by him is photo copy of the letter given to him and the original was in fact addressed and given to the President as is required under law. This is a question which at best can be stated to have given

rise to a disputed question of fact. Unlike the decision reported in **Sadasivan v. Joint Registrar** (1994(2) K.L.T. 238) this is a case where petitioners 5 to 8 have admitted the fact that they have resigned as evident from Exts.R1(f) to R1(i). I am also not impressed by the contention of the petitioners that there is no warrant for the action under Section 33 on 19.5.2007 when the resignation alleged is dated 2.5.2007. Apparently when the matter engaged the attention of the Registrar, action as permitted under Section 33 was taken. In such circumstances, I do not think that the petitioners are entitled to take up the stand that there was no resignation. I do not find any bonafides in the claim of the petitioners.

Accordingly the writ petition fails and it is dismissed.

(K.M. JOSEPH, JUDGE)

sb